with the adoption of the Constitution, and continued by repeated instances through a long series of years, may always influence, and in doubtful cases should determine, the judicial mind on a question of the interpretation of the Constitution. Stuart agt. Laird, 1 Cranch, 269; Martin agt. Hunter, 1 Whea., 304; Cohens agt. Virginia, 6 Whea., 264; Prigg agt. Pennsylvania, 16 Pet., 621; Cooley agt. Port Wardens, 12 How., 315.

In this view I proceed briefly to examine the practical construction placed on the clause now in question, so far as it respects the inclusion therein of the power to permit or prohibit Slavery in the territories.

It has already been stated that after the government of the United States was organized under the Constitution, the temporary government of the territory northwest of the river Ohio could no longer exist, save under the powers conferred on Congress by the Constitution. Whatever legislative, judicial or executive authority was exercised therein could be derived only from the people of the United States under the Constitution. And, accordingly, an act was passed on the 7th day of August, 1789 (1 Stats. at Large, 50) which recites:

"Whereas, In order that the ordinance of the United States in Congress assembled, for the government of the territory northwest of the river Ohio, *may continue to have full effect*, it is required that certain provisions should be made, so as to adapt the same to the present Constitution of the United States."

It then provides for the appointment by the President of all officers, who, by force of the ordinance, were to have been appointed by the Congress of the Confederation, and their commission, in the manner required by the Constitution; and empowers the Secretary of the Territory to exercise the powers of the Governor in case of the death or necessary absence of the latter.

Here is an explicit declaration of the will of the 1st Congress, of which fourteen members, including Mr. Madison, had been members of the Convention which framed the Constitution, that the ordinance, one article of which prohibited Slavery, "should continue to have full effect." Gen. Washington, who signed this bill, as President, was President of that Convention.

It does not appear to me to be important, in this connection, that that clause in the ordinance which prohibited Slavery was one of a series of articles of what is therein termed a compact. The Congress of the Confederation had no power to make such a compact, nor to act at all on the subject, and after what had been so recently said by Mr. Madison on this subject in the 38th number of *The Federalist*, I cannot suppose that he or any others who voted for this bill attributed any intrinsic effect to what was denominated in the ordinance a compact between "the original States and the "people and States in the new territory;" there being no new States then in existence in the territory, with whom a compact could be made, and the few scattered inhabitants, unorganized into a political body, not being capable of becoming a party to a treaty, even if the Congress of the Confederation had had power to make one touching the government of that territory.

I consider the passage of this law to have been an assertion by the 1st Congress of the power of the United States to prohibit Slavery within this part of the territory of the United States; for it clearly shows that Slavery was thereafter to be prohibited there, and it could be prohibited only by an exercise of the power of the United States under the Constitution; no other power being capable of operating within that territory after the Constitution took effect.

On the 2d of April, 1790, (1 Stats. at Large, 106,) the first Congress passed an act accepting a deed of cession by North Carolina of that territory afterward erected into the State of Tennessee. The fourth express condition contained in this deed of cession, after providing that the inhabitants of the territory shall be temporarily governed in the same manner as those beyond the Ohio, is followed by these words: "*Pro-"vided always*, that no regulations made or to be "made by Congress shall tend to emancipate slaves."

This provision shows that it was then understood Congress might make a regulation prohibiting Slavery, and that Congress might also allow it to continue to exist in the territory; and accordingly when, a few days later, Congress passed the act of May 26th, 1790, (1 Stats. at Large, 123) for the government of the territory south of the river Ohio, it provided: "And the "government of the territory south of the Ohio shall be "similar to that now exercised in the territory north-"west of the Ohio, except so far as is otherwise pro-"vided in the conditions expressed in an act of Con-"gress of the present session, entitled, 'An Act to ac-"cept a cession of the claims of the State of North "Carolina to a certain district of western territory.'" Under the government thus established, slavery existed until the territory became the State of Tennessee.

On the 7th of April, 1798 (1 Stats. at Large, 549), an act was passed to establish a government in the Mississippi Territory in all respects like that exercised in the territory northwest of the Ohio, "excepting and "excluding the last article of the ordinance made for "the government thereof by the late Congress on the "13th day of July, 1787." When the limits of this territory had been amicably settled with Georgia, and the latter ceded all its claim thereto, it was one stipulation in the compact of cession, that the ordinance of July 13, 1787, "shall in all its parts extend to the terri-"tory contained in the present act of cession, that arti-"cle only excepted which forbids slavery." The government of this territory was subsequently established and organized under the act of May 10, 1800; but so much of the ordinance as prohibited slavery was not put in operation there.

LEGISLATIVE AND EXECUTIVE PRECEDENTS FOR THE PROHIBITION OF SLAVERY.

Without going minutely into the details of each case, I will now give references to two classes of acts, in one of which Congress has extended the Ordinance of 1787, including the article prohibiting Slavery, over different Territories, and thus exerted its power to prohibit it; in the other, Congress has erected governments over territories acquired from France and Spain, in which Slavery existed, but refused to apply to them that part of the government under the Ordinance which excluded Slavery.

Of the first class are the act of May 7, 1800 (2 Stats. at Large, 58), for the government of the Indiana Territory; the act of January 11, 1805 (2 Stats. at Large, 309), for the government of Michigan Territory; the act of May 3, 1809 (2 Stats. at Large, 514), for the government of the Illinois Territory; the act of April 20, 1836 (5 Stats. at Large, 10), for the government of the Territory of Wisconsin; the act of June 12, 1838, for the government of the Territory of Iowa; the act of August 14, 1848 for the government of the Territory of Oregon. To these instances should be added the act of March 6, 1820 (3 Stats at Large, 548), prohibiting Slavery in the territory acquired from France, being north-west of Missouri and north of 36 deg. 30 min. north latitude.

Of the second class, in which Congress refused to interfere with Slavery already existing under the municipal law of France or Spain, and established governments by which Slavery was recognized and allowed, are the act of March 26, 1804 (2 Stats. at Large, 283), for the government of Louisiana; the act of March 2, 1805 (2 Stats. at Large, 322), for the government of the Territory of Orleans; the act of June 4, 1812 (2 Stats. at Large, 743), for the government of the Missouri Territory; the act of March 30, 1822 (3 Stats. at Large, 654), for the government of the Territory of Florida. Here are eight distinct instances, beginning with the first Congress and coming down to the year 1848, in which Congress has excluded Slavery from the territory of the United States; and six distinct instances in which Congress organized Governments of Territories by which Slavery was recognized and continued, beginning also with the first Congress and coming down to the year 1822. These acts were severally signed by seven Presidents of the United States, beginning with Gen. Washington, and coming regularly down as far as Mr. John Quincy Adams, thus including all who were in public life when the Constitution was adopted.

If the practical construction of the Constitution contemporaneously with its going into effect, by men intimately acquainted with its history from their personal participation in framing and adopting it, and continued by them through a long series of acts of the gravest importance, be entitled to weight in the judicial mind on a question of construction, it would seem to be difficult to resist the force of the acts above adverted to.

It appears, however, from what has taken place at the bar, that notwithstanding the language of the Constitution, and the long line of legislative and executive precedents under it, three different and opposite views are taken of the power of Congress respecting Slavery in the Territories.

One is that, though Congress can make a regulation prohibiting Slavery in a Territory, they cannot make a regulation allowing it; another is, that it can neither be established nor prohibited by Congress, but that the people of a Territory, when organized by Congress, can establish or prohibit Slavery; while the third is, that the Constitution itself secures to every citizen who holds slaves under the laws of any State the indefeasible right to carry them into any Territory and there hold them as property.

No particular clause of the Constitution has been referred to at the bar in support of either of these views. The first seems to be rested upon general considerations concerning the social and moral evils of Slavery, its relations to republican governments, its inconsistency with the Declaration of Independence and with natural right.

The second is drawn from considerations equally general, concerning the right of self government and the nature of the political institutions which have been established by the people of the United States.

While the third is said to rest upon the equal right of all citizens to go with their property upon the public domain, and the inequality of a regulation which would admit the property of some and exclude the property of other citizens; and, inasmuch as slaves are chiefly held by citizens of those particular States where Slavery is established, it is insisted that a regulation excluding Slavery from a Territory operates practically to make an unjust discrimination between citizens of different States in respect to their use and enjoyment of the territory of the United States.

INTERPRETATION OF THE CONSTITUTION.

With the weight of either of these considerations, when presented to Congress to influence its action, this Court has no concern. One or the other may be justly entitled to guide or control the legislative judgment upon what is a needful regulation. The question here is whether they are sufficient to authorize this Court to insert into this clause of the Constitution an exception of the exclusion or allowance of Slavery, not found therein, nor in any other part of that instrument. To engraft on any instrument a substantive exception not found in it, must be admitted to be a matter attended with great difficulty. And the difficulty increases with the importance of the instrument, and the magnitude and complexity of the interests involved in its construction. To allow this to be done with the Constitution, upon reasons purely political, renders its judicial interpretation impossible because judicial tribunals, as such, cannot decide upon political considerations. Political reasons have not the requisite certainty to afford rules of juridical interpretation. They are different in different men. They are different in the same men at different times. And when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men who, for the time being, have power to declare what the Constitution is, according to their own views of what it ought to mean. When such a method of interpretation of the Constitution obtains, in place of a republican government with limited and defined powers, we have a government which is merely an exponent of the will of Congress; or what, in my opinion, would not be preferable, an exponent of the individual political opinions of the members of this Court.

If it can be shown by anything in the Constitution itself, that when it confers on Congress the power to make *all* needful rules and regulations respecting the territory belonging to the United States, the exclusion or the allowance of Slavery was excepted; or if anything in the history of this provision tends to show that such an exception was intended by those who framed and adopted the Constitution to be introduced into it I hold it to be my duty carefully to consider and to allow just weight to such considerations in interpreting the positive text of the Constitution. But where the Constitution has said *all* needful rules and regulations, I must find something more than theoretical reasoning to induce me to say it did not mean all. There have been eminent instances in this Court, closely analogous to this one, in which such an attempt to introduce an exception not found in the Constitution itself has failed of success.

By the eighth section of the first article, Congress has the power of exclusive legislation in all cases whatsoever within this District.

In the case of Loughborough agt. Blake (5 Whea. 324), the question arose whether Congress has power to impose direct taxes on persons and property in this District. It was insisted that, though the grant of power was, in its terms, broad enough to include direct taxation, it must be limited by the principle that taxation and representation are inseparable. It would not be easy to fix on any political truth, better established or more fully admitted in our country, than that taxation and representation must exist together. We went into the war of the Revolution to assert it, and it is incorporated as fundamental into all American governments. But, however true and important this maxim may be, it is not necessarily of universal application. It was for the people of the United States who formed the Constitution to decide whether it should or should not be permitted to operate within this District. Their decision was embodied in the words of the Constitution; and as that contained no such exception as would permit the maxim to operate in this District, this Court, interpreting that language, held that the exception did not exist.

Again, the Constitution confers on Congress power to regulate commerce with foreign nations. Under this, Congress passed an act on the 22d of December, 1807, unlimited in duration, laying an embargo on all ships and vessels in the ports, or within the limits and jurisdiction of the United States. No law of the United States ever pressed so severely upon particular States. Though the constitutionality of the law was contested with an earnestness and zeal proportioned to the ruinous effects which were felt from it, and though, as Mr. Chief Justice Marshall has said (9 Whea., 192), "no "want of acuteness in discovering objections to a "measure to which they felt the most deep-rooted hos-"tility will be imputed to those who were arrayed in "opposition to this," I am not aware that the fact that it prohibited the use of a particular species of property, belonging almost exclusively to citizens of a few States, and this indefinitely, was ever supposed to show that it was unconstitutional. Something much more stringent, as a ground of legal judgment, was relied on—that the power to regulate commerce did not include the power to annihilate commerce.

But the decision was that under the power to regulate commerce, the power of Congress over the subject was restricted only by those exceptions and limitations contained in the Constitution; and as neither the clause in question, which was a general grant of power to regulate commerce, nor any other clause of the Constitution, imposed any restriction as to the duration of an embargo, an unlimited prohibition of the use of the shipping of the country was within the power of Congress. On this subject Mr. Justice Daniel, speaking for the Court in the case of United States vs. Marigold, (9 How. 560), says:

"Congress are, by the Constitution, vested with the power to regulate commerce with foreign nations; and however, at periods of high excitement, an application of the terms 'to regulate commerce,' such as would embrace absolute prohibition, may have been questioned, yet, since the passage of the embargo and non-intercourse laws, and the repeated judicial sanctions these statutes have received, it can scarcely at this day be open to doubt, that every subject falling legitimately within the sphere of commercial regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or the important interests of the entire nation. The power once conceded, it may operate on any and every subject of commerce to which the legislative discretions may apply it."

If power to regulate commerce extends to an indefinite prohibition of the use of all vessels belonging to citizens of the several States may operate, without exception, upon every subject of commerce to which the legislative discretion may apply it, upon what grounds can I say that the power to make all needful rules and regulations respecting the territory of the United States is subject to an exception of the allowance or prohibition of Slavery therein?

While the regulation is one "respecting the territory;" while it is in the judgment of Congress, "a needful regulation," and is thus completely within the words of the grant; while no other clause of the Constitution can be shown which requires the insertion of an exception respecting Slavery, and while the practical construction for a period of upward of fifty years forbids such an exception, it would, in my opinion, violate every sound rule of interpretation to force that exception into the Constitution upon the strength of abstract political reasoning, which we are bound to believe the people of the United States thought insufficient to induce them to limit the power of Congress, because what they have said contains no such limitation.

Before I proceed further to notice some other grounds of supposed objection to this power of Congress, I desire to say that if it were not for my anxiety to insist upon what I deem a correct exposition of the Constitution, if I looked only to the purposes of the argument, the source of the power of Congress asserted in the opinion of the majority of the Court would answer those purposes equally well. For they admit that Congress has power to organize and govern the Territories until they arrive at a suitable condition for admission to the Union; they admit also, that the kind of government which shall thus exist should be regulated by the condition and wants of each Territory, and that it is necessarily committed to the discretion of Congress to enact such laws for the purpose as that discretion may dictate, and no limit to that discretion has been shown or ever suggested, save those positive prohibitions to legislate, which are found in the Constitution.

I confess myself unable to perceive any difference whatever between my own opinion of the general extent of the power of Congress and the opinion of the majority of the Court, save that I consider it derivable from the express language of the Constitution, while they hold it to be silently implied from the power to acquire territory. Looking at the power of Congress over the Territories as of the extent just described, what positive prohibition exists in the Constitution which restrained Congress from enacting a law in 1820 to prohibit Slavery north of 36 degrees 30 minutes?

The only one suggested is that clause in the fifth article of the amendments of the Constitution, which declares that no person shall be deprived of his life, liberty, or property, without due process of law. I will now proceed to examine the question whether this clause is entitled to the effect thus attributed to it. It is necessary, first, to have a clear view of the nature and incidents of that particular species of property which is now in question.

Slavery, being contrary to natural right, is created only by municipal law. This is not only plain in itself, and agreed to by all writers on the subject, but is inferable from the Constitution itself, and has been explicitly declared by this Court. The Constitution refers to slaves as "persons held to service in one State under the laws thereof." Nothing can more clearly describe a *status* created by municipal law. In Prigg vs. Pennsylvania, 10 Pet. 611, this Court said, "The State of "Slavery is deemed to be a mere municipal regulation, "founded on and limited to the range of territorial "laws." In Rankin vs. Lydia, 2 Marsh, 12, 470, the Supreme Court of Appeals of Kentucky said, "Slavery "is sanctioned by the laws of this State, and the right "to hold them under our municipal regulations is un-"questionable. But we view this as a right existing "by positive law of municipal character, without "foundation in the law of nature, or the unwritten "common law." I am not acquainted with any case or writer questioning the correctness of this doctrine. See also 1 Burge Col. and For. Laws 738-741, where the authorities are collected.

The *status* of Slavery is not necessarily always attended with the same powers on the part of the master. The master is subject to the supreme power of the State whose will controls his action toward his slave, and this control must be defined and regulated by the municipal law. In one State, as at one period of the Roman law, it may put the life of the slave into the hand of the master; others, as those of the United States, which tolerate Slavery, may treat the slave as a person when the master takes his life. While in others, the law may recognize a right of the slave to be protected from cruel treatment. In other words the *status* of Slavery embraces every condition, from that in which the slave is known to the law simply as a chattel, with no civil rights, to that in which he is recognized as a person for all purposes, save as the compulsory power of directing and receiving the fruits of his labor. Which of these conditions shall attend the *status* of Slavery must depend on the municipal law which creates and upholds it.

And not only must the *status* of slavery be created and measured by municipal law, but the rights, powers and obligations which grow out of that *status* must be defined, protected and enforced by such laws. The liability of the master for the torts and crimes of his slave, and of third persons for assaulting, or injuring, or harboring, or kidnapping him, the forms and modes of emancipation, suits for freedom, the capacity of the slave to be party to a suit, or to be a witness, with such police regulations as have existed in all civilized States where Slavery has been tolerated, are among the subjects upon which municipal legislation becomes necessary when Slavery is introduced.

Is it conceivable that the Constitution has conferred the right on every citizen to become a resident on the territory of the United States with his slaves and there to hold them as such, but has neither made nor provided for any municipal regulations which are essential to the existence of Slavery?

Is it not more rational to conclude that they who framed and adopted the Constitution were aware that persons held to service under the laws of a State are property only to the extent and under the conditions fixed by those laws; that they must cease to be available as property when their owners voluntarily place them permanently within another jurisdiction, where no municipal laws on the subject of Slavery exist; and that being aware of these principles, and having said nothing to interfere with or displace them, or to compel Congress to legislate in any particular manner on the subject, and having empowered Congress to make all needful regulations respecting the territory of the United States, it was their intention to leave to the discretion of Congress what regulations, if any, should be made concerning Slavery therein. Moreover, if the right exists, what are its limits, and what are its conditions. If citizens of the United States have the right to take their slaves to a territory, and hold them there as slaves, without regard to the laws of the territory, I suppose this right is not to be restricted to the citizens of slaveholding States. A citizen of a State which does not tolerate Slavery can hardly be denied the power of doing the same thing. And what law of Slavery does either take with him to the Territory? If it be said to be those laws respecting Slavery which existed in the particular State from which the slave last came, what an anomaly is this! Where else can we find, under the law of any civilized country, the power to introduce and permanently continue diverse systems of foreign municipal law for holding persons in Slavery? I say, not merely to introduce, but permanently to continue these anomalies. For the offspring of the female must be governed by the foreign municipal laws to which the mother was subject; and when any slave is sold, there must pass with him, by a species of subrogation, and as a kind of unknown *jus in re*, the foreign municipal laws which constituted, regulated and preserved the *status* of the slave before his exportation. Whatever theoretical importance may be now supposed to belong to the maintenance of such a right, I feel a perfect conviction that it would, if ever tried, prove to be as impracticable in fact as it is, in my judgment, monstrous in theory.

I consider the assumption which lies at the basis of this theory to be unsound; not in its just sense, and when properly understood, but in the sense which has been attached to it. That assumption is, that the territory ceded by France was acquired for the equal benefit of all the citizens of the United States. I agree to the position. But it was acquired for their benefit in collective, not their individual capacities. It was acquired for their benefit as an organized political society, subsisting as "the people of the United States" under the Constitution of the United States; to be administered justly and impartially and as nearly as possible for the equal benefit of every individual citizen, according to the best judgment and discretion of the Congress—to whose power, as the legislature of the nation which acquired it, the people of the United States have committed its administration. Whatever individual claims may be founded on local circumstances, or sectional differences of condition, cannot, in my opinion, be recognized in this court, without arrogating to the judicial branch of the Government powers not committed to it; and which, with all the unaffected respect I feel for it, when acting in its proper sphere, I do not think it fitted to wield.

Nor, in my judgment, will the position, that a prohibition to bring slaves into a territory deprives any one of his property without due process of law, bear examination.

It must be remembered that this restriction on the legislative power is not peculiar to the Constitution of the United States; it was borrowed from *Magna Charta*; was brought to America by our ancestors as part of their inherited liberties and has existed in all the States usually in the very words of the great charter. It existed in every political community in America in 1787, when the ordinance prohibiting slavery north and west of the Ohio was passed.

And if a prohibition of Slavery in a territory in 1820, violated this principle of *Magna Charta*, the Ordinance of 1787 also violated it; and what power had, I do not say the Congress of the Confederation alone, but the Legislature of Virginia, or the Legislatures of any or all the States of the Confederacy, to consent to such a violation. The people of the States had conferred no such power. I think I may at least say, if the Congress did then violate *Magna Charta* by the Ordinance, no one discovered that violation. Besides, if the prohibition upon all persons, citizens as well as others, to bring slaves into a territory, and a declaration that if brought they shall be free, deprives citizens of their property without due process of law, what shall we say of the legislation of many of the slaveholding States which have enacted the same prohibition. As early as October, 1778, a law was passed in Virginia, that hereafter no slave should be imported into that commonwealth by sea or by land; and that every slave who should be imported should become free. A citizen of Virginia purchased in Maryland a slave who belonged to another citizen of Virginia, and removed with the slave to Virginia. The slave sued for her freedom and recovered it; as may be seen in Wilson agt. Isabell, 5 Call's R. 425. See also Hunter agt. Hulsher, 1 Leigh, 172, and a similar law has been recognized as valid in Maryland, in Stewart agt. Oaks, 5 Har. and John, 107. I am not aware that such laws, though they exist in many States, were ever supposed to be in conflict with the principle of *Magna Charta* incorporated into the State Constitutions. It was certainly understood by the Convention which framed the Constitution, and ever since, that under the power to regulate commerce, Congress could prohibit the importation of slaves, and the exercise of the power was restrained till 1808. A citizen of the United States owns slaves in Cuba, and brings them to the United States, where they are set free by the legislation of Congress. Does this legislation deprive him of his property without due process of law? If so, what becomes of the laws prohibiting the slave-trade? If not, how can a similar regulation respecting a Territory violate the fifth amendment of the Constitution?

Some reliance was placed by the defendant's counsel upon the fact that the prohibition of Slavery in this Territory was in the words, "that Slavery, &c., shall "be and is hereby *forever* prohibited." But the insertion of the word *forever* can have no legal effect. Every enactment not expressly limited in its duration continues in force until repealed or abrogated by some competent power, and the use of the word "forever" can give to the law no more durable operation. The argument is, that Congress cannot so legislate as to bind the future State formed out of the Territory, and in this instance it has attempted to do so. Of the political reasons which may have induced the Congress to use these words, and which caused them to expect that subsequent Legislatures would conform their action to the general opinion of the country that it ought to be permanent, this Court can take no cognizance.

However fit such considerations are to control the action of Congress, and however reluctant a statesman may be to disturb what has been settled, every law made by Congress may be repealed, and, saving private rights and public rights gained by States, its repeal is subject to the absolute will of the same power which enacted it. If Congress had enacted that the crime of murder, committed in this Indian Territory north of 36 deg. 30m., by or on any white man, should *forever* be punishable with death, it would seem to me an insufficient objection to an indictment, found while it was a Territory, that at some future day States might exist there, and so the law was invalid, because by its terms it was to continue in force forever. Such an objection rests upon a misapprehension of the province and power of courts respecting the constitutionality of laws enacted by the Legislature.

If the Constitution prescribe one rule, and the law another and different rule, it is the duty of Courts to declare that the Constitution, and not the law, governs the case before them for judgment. If the law include no case save those for which the Constitution has furnished a different rule, or no case which the Legislature has power to govern, then the law can have no operation. If it include cases which the Legislature has power to govern, and concerning which the Constitution does not prescribe a different rule, the law governs those cases, though it may, in its terms, attempt to include others, on which it cannot operate. In other words, this Court cannot declare void an act of Congress which constitutionally embraces some cases, though other cases within its terms are beyond the control of Congress, or beyond the reach of that particular law. If, therefore, Congress had power to make a law excluding Slavery from the territory while under the exclusive power of the United States, the use of the word "forever" does not invalidate the law so long as Congress has the exclusive legislative power in the territory.

But it is further insisted that the treaty of 1803, between the United States and France, by which this territory was acquired, has so restrained the constitutional powers of Congress, that it cannot by law prohibit the introduction of Slavery into that part of this territory north and west of Missouri, and north of 36 deg. 30 min. north latitude.

By a treaty with a foreign nation, the United States may yet fully stipulate that the Congress will or will not exercise its legislative power in some particular manner, on some particular subject. Such promises, when made, should be voluntarily kept, with the most scrupulous good faith. But that a treaty with a foreign nation can deprive the Congress of any part of the legislative power conferred by the people, so that it no longer can legislate as it was empowered by the Constitution to do, I more than doubt.

The powers of the Government do and must remain unimpaired. The responsibility of the Government to a foreign nation for the exercise of those powers is quite another matter. That responsibility is to be met, and justified to the foreign nation, according to the requirements of the rules of public law, but never upon the assumption that the United States had parted with or restricted any power of acting according to its own free will, governed solely by its own appreciation of its duty. The second section of the fourth article is:

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all the treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land."

This has made treaties part of our municipal law; but it has not assigned to them any particular degree of authority, nor declared that laws so enacted shall be irrepealable. No supremacy is assigned to treaties over acts of Congress. That they are not perpetual and must be in some way repealable, all will agree.

If the President and the Senate alone possess the power to repeal or modify a law found in a treaty, inasmuch as they can change or abrogate one treaty only by making another inconsistent with the first, the Government of the United States could not act at all, to that effect, without the consent of some foreign Government. I do not consider—I am not aware it has ever been considered—that the Constitution has placed our country in this helpless condition. The action of Congress in repealing the treaties with France by the act of July 7, 1798 (1 Stats. at Large, 577), was in conformity with these views. In the case of Taylor et al. agt. Morton (2 Curtis's Cir. Ct. R. 454), I had occasion to consider this subject, and I adhere to the views there expressed.

If, therefore, it were admitted that the treaty between the United States and France did contain an express stipulation that the United States would not exclude Slavery from so much of the ceded territory as is now in question, this Court could not declare that an act of Congress excluding it was void by force of the treaty. Whether or no a case existed sufficient to justify a refusal to execute such a stipulation, would not be a judicial, but a political and legislative question, wholly beyond the authority of this Court to try and determine. It would belong to diplomacy and legislation, and not to the administration of existing law. Such a stipulation in a treaty, to legislate or not to legislate in a particular way, has been repeatedly held in this Court to address itself to the political or the legislative power, by whose action thereon this Court is bound. Foster agt. Nielson, 2 Peters 314; Garcia agt. Lee, 12 Peters 519.

But, in my judgment, this treaty contains no stipulation in any manner affecting the action of the United States respecting the Territory in question. Before examining the language of the treaty, it is material to bear in mind that the part of the ceded Territory lying north of 36 deg. 30 min., and west of the present State of Missouri, was then a wilderness, uninhabited save by savages, whose possessory title had not then been extinguished.

It is impossible for me to conceive on what ground France could have advanced a claim, or could have desired to advance a claim to restrain the United States from making any rules and regulations respecting this territory, which the United States might think fit to make, and still less can I conceive of any reason which would have induced the United States to yield such a claim. It was to be expected that France would desire to make the change of sovereignty and jurisdiction as little burdensome as possible to the then inhabitants of Louisiana, and might well exhibit even an anxious solicitude to protect their property and persons and secure to them and their posterity their religious and political rights; and the United States, as a just government, might readily accede to all proper stipulations respecting those who were about to have their allegiance transferred. But what interest France could have in uninhabited territory, which, in the language of the treaty, was to be transferred "forever, and in "full sovereignty" to the United States, or how the United States could consent to allow a foreign nation to interfere in its purely internal affairs, in which that foreign nation had no concern whatever, is difficult for me to conjecture. In my judgment this treaty contains nothing of the kind.

The third article is supposed to have a bearing on the question. It is as follows:

"The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizenship of the United States; and in the meantime they shall be maintained and protected in the enjoyment of their liberty, property, and the religion they profess."

There are two views of this article, each of which, I think, decisively shows that it was not intended to restrain the Congress from excluding Slavery from that part of the ceded Territory then uninhabited. The first is, that, manifestly, its sole object was to protect individual rights of the then inhabitants of the Territory. They are to be "maintained and protected in the free "enjoyment of their liberty, property, and the religion "they possess." But this article does not secure to them the right to go upon the public domain ceded by the treaty, either with or without their slaves. The right or power of doing this did not exist before, or at the time the treaty was made. The French and Spanish Governments, while they held the country, as well as the United States when they acquired it, always exercised the undoubted right of excluding inhabitants from the Indian country, and of determining when, and on what conditions, it should be opened to settlers. And a stipulation, that the then inhabitants of Louisiana should be protected in their property, can have no reference to their use of that property where they had no right under the treaty to go with it, save at the will of the United States. If one who was an inhabitant of Louisiana at the time of the treaty, had afterwards taken property then owned by him, consisting of fire arms, ammunition and spirits, and had gone into the Indian country north of 36 degrees 30 minutes, to sell them to the Indians, all must agree the third article of the treaty would not have protected him from indictment under the act of Congress of March 30, 1802, (2 Stat. at Large, 139,) adopted and extended to this Territory by the act of March 26, 1804, (2 Stat. at Large, 283.)

Besides, whatever rights were secured were individual rights. If Congress should pass any law which violated such rights of any individual, and those rights were of such a character as not to be within the lawful control of Congress under the Constitution, that individual could complain, and the act of Congress, as to such rights of his, would be inoperative; but it would be valid and operative as to all other persons, whose individual rights did not come under the protection of the treaty. And, inasmuch as it does not appear that any inhabitant of Louisiana, whose rights were secured by treaty, had been injured, it would be wholly inadmissible for this Court to assume, first, that one or more such cases may have existed; and second, that if any did exist, the entire law was void, not only as to those cases, if any, in which it could not rightfully operate, but as to all others, wholly unconnected with the treaty, in which such law could rightfully operate.

But it is quite necessary, in my opinion, to pursue this inquiry further, because it clearly appears from the language of the article, and it has been decided by this Court, that the stipulation was temporary, and ceased to have any effect when the then inhabitants of the Territory of Louisiana, in whose behalf the stipulation was made, were incorporated into the Union.

In the case of New-Orleans agt. De Armas et al. (9 Peters, 223), the question was, whether a title to property, which existed at the date of the treaty, continued to be protected by the treaty after the State of Louisiana was admitted to the Union. The third article of the treaty was relied on. Mr. Chief-Justice Marshall said:

"This article obviously contemplates two subjects. One that Louisiana shall be admitted into the Union as soon as possible, on an equal footing with the other States; and the other, that, till such admission, the inhabitants of the ceded territory shall be protected in the free enjoyment of their liberty, property and religion. Had any of these rights been violated while these stipulations continued in force, the individual supposing himself to be injured might have brought his case into this Court under the twenty-fifth section of the Judicial Act. But this stipulation ceased to operate when Louisiana became a member of the Union, and its inhabitants were 'admitted to the enjoyment of all the rights, advantages 'and immunities of citizens of the United States.'"

The cases of Chotean agt. Margurita, 12 Peters, 507, and Permoli agt. New-Orleans, 3 How., 589, are in conformity with this view of the treaty.

To convert this temporary stipulation of the treaty in behalf of ceded French subjects who then inhabited a small portion of Louisiana into a permanent restriction upon the power of Congress to regulate territory then uninhabited, and to assert that it not only restrains Congress from affecting the rights of property of the ceded inhabitants, but enabled them and all other citizens of the United States to go into any part of the ceded territory with their slaves, and hold them there, is a construction of this treaty so opposed to its natural meaning, and so far beyond its subject matter, and the evident design of the parties, that I cannot assent to it. In my opinion, this treaty has no bearing on the present question.

For these reasons I am of opinion that so much of the several acts of Congress as prohibited Slavery and involuntary servitude within that part of the territory of Wisconsin lying north of 36 deg. 30 min. north latitude, and west of the Mississippi, were constitutional and valid.

I have expressed my opinion, and the reasons therefor at far greater length than I could have wished, upon the different questions on which I have found it necessary to pass to arrive at a judgment on the case at bar. These questions are numerous, and the grave importance of some of them required me to exhibit fully the grounds of my opinion. I have touched no question which, in the view I have taken, it was not absolutely necessary for me to pass upon, to ascertain whether the judgment of the Circuit Court should stand or be reversed. I have avoided no question on which the validity of that judgment depends. To have done either more or less, would have been inconsistent with my duty.

In my opinion the judgment of the Circuit Court should be reversed, and the cause remanded for a new trial.

THE STATE OF EUROPE.

From Our Own Correspondent.

LONDON, Tuesday, Feb. 24, 1857.

The virtual rejection of the Dallas-Clarendon Treaty by the American Senate has made a painful impression in England, as a sign how difficult it is to deal with the United States, for it seems, indeed, that the Senate at Washington is as eager to keep up international difficulties as other nations are anxious to terminate them. Mr. Dallas's position has become very embarrassing, if not altogether untenable, and the opposition against the clause excluding Slavery from Ruatan and the Bay islands must combine the feeling of all the civilized world against the sham Democracy of America. Mr. Douglas and his myrmidons are in fact the best allies of European despotism, since everybody must be disgusted with the proceedings and policy—home and foreign—of the oligarchical faction which now rules the United States under the pretense of Democracy. It is, however, true that English politics are more hopeful than those of America. The coolness with which every attempt to reform the rotten Administration and the rotten Parliament is stifled, cannot but astonish those who have witnessed the feverish excitement of the times of the first Reform bill, or of the Free-Trade campaign. And still all England agrees that Parliament needs reform, but the general prosperity of the upper and middle classes, and their rush into speculation, make comprehensive schemes of reform almost impossible. Everybody complains of the "Circumlocution offices," of "general mismanagement," of "red tape," but whenever Mr. Locke King, or Sir Joshua Walmsley, or Mr. Roebuck, try to introduce measures for remodeling either the Administration or the representation, they are voted down in the House and remain unsupported by the public at large. It is well known that more than one-half of the seats in Parliament belong to the pocket-boroughs of the Aristocracy, and are filled by the younger sons or hangers-on of about one hundred and sixty great families, while the representation of the so-called popular constituencies is but too often to be bought by money—a contested election entailing always an outlay of from five to ten thousand pounds on each of the competitors. Mr. Gassiot, one of the most eminent men among the Administrative Reformers, characterizes this state of things in the following graphic way:

"Admission to the House of Commons by money tends to lower its character and deprive it of public confidence; for persons who squander large sums at elections are scarcely ever known to introduce a good measure, or to display any useful knowledge of the policy essential to the welfare of the country, although at elections they are profuse of promises on every popular subject. Without meaning the slightest disrespect to any honorable profession, some members of which undoubtedly owe their seats to this extravagant expenditure, I may refer to—

"*Lawyers seeking professional advancement*, making money by abuses they do nothing to remedy, promising to support political reforms which they are well aware have no chance of being carried; but anxious to earn and eager to accept legal promotion whenever it is offered as the reward of their support of the Minister of the day.

"*Military and naval officers*, brave and gallant men in action, *ignoring Administrative Reform in their own professions*—men from whom even a brother officer's efforts for improvement cannot find support—who are silent on the subject of competitive examinations for commissions, on securities for the promotion of merit, and on the abolition of the purchase system.

"*Traders and others of low credit, character or position*, who freely spend their own or their creditors' money, and use their senatorial position to obtain directorships of public companies, yet having been actual insolvents under disgraceful circumstances—bankrupts who have tendered compositions of a few shillings in the pound, but find means to pay the expense of an election, and thus obtain for themselves at the West End of London the credit of being men of wealth and influence. Evidences of this have been recently exhibited, and other cases are known to exist—speculators in railways and in bubble companies—participators in and encouragers of that reckless extravagance which has spread ruin among so many families, and demoralization throughout the land to a fearful extent.

"*Spendthrifts and men of desperate fortunes* to this day seek the shelter of Parliament as a protection from their creditors.

"Lastly, *vain, wealthy men, without any intellectual accomplishments—lucky speculators* in some hazardous and reckless scheme, who, with their easily acquired money, seek Parliamentary honors, and will pay some fabulous price for the mere gratification of personal vanity. This is a class among which the agents of popular constituencies find a rich harvest."

The alleged guano deposits on the Kooria-Mooria, Islands, or, to speak more precisely, on the Islands of Haski, Jibbea and Ghurzoad, in the Indian Ocean near the coast of the Arabian provinces Makra and Shedjer—the former dependent upon the Imaum of Muscat—begin to attract public attention. The Imaum has ceded his sovereignty over those islands to England, and the Government has vested the title to all the guano in Captain Ord and Mr. Pell of Edinburgh, the discoverers of the deposit, for a term of five years, stipulating that the guano should be sold at public auctions at Liverpool, and may be taken by any English ship from the islands themselves, upon paying a royalty of two pounds per tun. Captain Fremantle of the royal navy reports, however, that guano exists only in small quantities on the islands, and is of inferior quality, while Captain Ord represents it as being equal to the Peruvian guano. At any rate it is certain that the Government will protect the originators of the scheme and the royal grantees against the violence of the Arab inhabitants of the islands, who have expelled the first party attempting to take out the guano. The fact that these Islands are inhabited seems to confirm Captain Fremantle's impression, that the islands are valueless for guano, though one of them may in any case be used as a coaling station for the East India Company.

Lord Palmerston promised yesterday a satisfactory solution of the Neufchatel difficulty, but the promises of the noble Lord have become somewhat stale.

The jewel trade is now peculiarly brisk on account of extensive orders from the East. The money scattered on Turkish soil during the war begins to flow back, and since Orientals like to place their money in jewels, the demand has become so great as to enhance the value of diamonds. The Sultan being about to give away his daughter to the son of the Egyptian Viceroy, has ordered jewelry for her to the extent of £100,000. Even her slippers are to be set with diamonds, and the setting of her fan and mirror is valued at £20,000. Less gigantic, but still very considerable, are the orders for the Queen of England and the King of Belgium, both of whom are to give away their daughters in the course of the year.

We have the following account from Cape Town:

"The sad information has been received by the Eolana that Prof. Wahlberg, a man of distinction in his native country, Sweden, and who for some time past has been engaged in traveling in the interior of this continent, was killed by an elephant while hunting to the north-east of Lake N'Gami. It appears that having proceeded single handed, and on foot, to attack an elephant, he had scarcely time to raise his gun to his shoulder ere he was hurled to the ground and pinioned between the tusks of the enraged animal. His rifle was discovered broken short off at the stock by the elephant. The Damaras who accompanied Mr. Wahlberg, gave the following account of the lamentable accident:

"'We proceeded,' said the men, 'from the wagons in a westerly direction, and on the day of our departure we struck upon the spoor of a young bull-elephant, which we followed until the third day, when we came up to him in company with three others, one of which master shot, another was killed by Koolemann. Thence we continued on the spoor of the two remaining ones, one of which we fell in with and shot on the following day. The fourth morning we recovered the track of the young bull which we had taken up on the day of leaving the wagons. Not being able to come up with him before nightfall, we slept (as we had done on previous occasions) on the spoor. The next day, feeling hungry, and having managed to shoot a zebra, we camped for the night. The ensuing day, still continuing on the track we reached a vley where we bivouacked. Next morning we passed through a village situated on the banks of a large river called Tamalakan or Tamanacle (see Dr. Livingston's map). The inhabitants were Bakoba, from whom we obtained some pumpkins, our master's provisions being exhausted. In the evening of this day we at last overtook the young elephant, which we found standing together with another elephant (an old bull), in an open flat near a small vley. We approached them with difficulty. Our master and Koolemann fired three shots at the larger elephant, which then fled toward the river, where we soon found and overtook him. Mr. Wahlberg now sent us forward to turn the elephant toward a point where he took up a position in order to intercept him. We succeeded, and having fired a shot at him he ran furiously in the direction of our master, but out of range. Mr. Wahlberg, accompanied by a bushman from the werft we had passed through, then followed his spoor. Shortly afterward hearing the elephant trumpeting, we hastened to join our master, but had not proceeded far when we met the bushman running in breathless haste toward us. We inquired for Mr. Wahlberg, and were told that the elephant had caught him. Hurrying to the spot indicated we found only the mangled remains of our poor master, which the enraged beast had just quitted—there was no sign of life. Indeed, the body was so fearfully mutilated as to be scarcely recognizable; we carefully collected and buried the remains.'"

The terrible colliery explosion at Sandhill was accompanied by the loss of 170 lives. A. P. C.

THE THREATENED WAR BETWEEN SPAIN AND MEXICO.

From Our Own Correspondent.

LONDON, Feb. 20, 1857.

Two questions of great importance now present themselves to the Spanish Cabinet—that of Mexico and that of Rome. The Mexican question threatens a foreign war, that of Rome an interior one. On one side the press—Absolutist, Moderado, Progresista and Democratic—calls loudly for justice against the outrages with which the Spaniards are being loaded in Mexico; and the Government, which needed very little spurring on to declare itself hostile to that Republic, is making warlike preparations, and is determined to act with energy. Being a martial Government, it can be easily understood that it does not think much of having recourse to diplomacy, which, taking into account the present circumstances, would perhaps be useless. On the other side, the apostolical party, whose root takes its sap from the Vatican, and its golden foliage from the mines of Spain, does not content itself—believing that it is triumphant—with the concessions made by the Government, and wishes to carry the reaction even behind the sale of the national property, taking back the immense tracts of Church lands, which were formerly incult in the power of the monks, and which now produce great riches, cultivated by their new proprietors, from the hands of these, and restoring them to the religious communities, whose extensive and immediate creation is exacted with the imperious tyranny which Rome uses toward nations which are weak. In vain has the Government attempted to satisfy the desires of the Papal See, making concessions which pass the limits set to the policy of Gen. Narvaez by the sufferance of the people. Rome has not yet sent her representative, and Sr. Mon, appointed Embassador of Spain to Rome, has not yet left for his post, under the pretense of a bad cold, of chilblains neglected, or of a toothache which troubles him. But in the actual state of the relations between the two Courts, the Spanish Minister of State aware that weak humanity has lungs and feet and teeth which must be sacrificed upon occasion, ought to have recommended to Sr. Mon patience and the airs of Italy. His not doing so is to most people proof sufficient that the state of the relations with Rome is very far from being satisfactory.

The *España* (Ministerial journal) of Feruary 14 says, with reference to the Mexican question:

"A naval division will set sail very shortly from our ports, composed of the ship-of-the line Rey Francisco, of the frigate Berenguela, one brig and two steam-frigates, one of which is the Francisco de Asis, which, united to the forces lying at anchor in the port of Havana, will form the Spanish squadron under orders for Mexico to exact complete satisfaction for the gross outrage put upon the honor of our flag.

"The Government responding to what its duty and patriotism imposes, is resolved to do all that is possible to obtain the honorable reparation which is demanded at the same time by our good name, by the laws human and divine, and by the universal cry of the country. We trust that there will not be a single voice in Spain which is not raised to-day on account of this determination to give encouragement and moral support to the Government, aiding it in this enterprise."

It may be relied upon that in expressing this confidence, the Ministerial organ has not overrated the sentiment of the country in its favor, and against the conduct of the authorities in Mexico. The press of all colors, and of every degree of influence, is out unanimously in articles breathing the determination of Spain to exact reparation for the assassination of the Spaniards by the troops of Alvarez, and promising the support of every class of Spanish society to carry through the undertaking. Even the democratic organs, which are the farthest removed from the Ministerial journals in all questions of interior policy, have gone ahead of them in the strength of their declamations against the Mexican indignities, and in the fullness of their promises to support the Government in a firm and unyielding policy toward that country. The signs look warlike. The naval expedition referred to by the *España* is certainly getting ready to sail immediately, and a division of land forces is also being prepared. The first blow contemplated, according to my information, which is from much nearer the secret councils of the Spanish Government than it ought to be for the interest of their plans, is to take possession of the town of Vera Cruz and the Castle of San Juan de Ulloa, and hold them until complete satisfaction can be obtained from the Mexican Government. The naval forces destined to bombard the Castle will be accompanied by a land division intended to disembark and attack the town at the same time. If it should be found inexpedient to disembark the troops on account of the preparations which Mexico may have been able to make to defend the town, it is still thought that the Castle will not be able to resist the efforts of the fleet. Once in the hands of the Spaniards, it is clear that this Castle, supplied and aided by the fleet, can be maintained against all Mexico, devoid as she is of naval power. It is clear also that, the Castle being in the hands of the Spaniards, the town of Vera Cruz will be at their mercy; and if the Republic should persist in refusing to settle her account with Spain, the ulterior thought of the Spanish Government at present is, that they can send an army of 10,000 men drawn from their forces in Cuba and Porto Rico, accustomed to the climate, up to the City of Mexico with as reasonable hopes of success as attended the army of Gen. Scott in